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AUG 31 2009

OFFICE OF PETITIONS

In re Application of	:	
Giovanola et al.	:	DECISION ON APPLICATION
Application No. 10/538,743	:	FOR PATENT TERM ADJUSTMENT
Filed: June 14, 2005	:	
Atty Docket No. 82652-243259	:	

This is in response to the "Request for Recalculation of Patent Term Adjustment" filed May 12, 2009. Applicant request the initial determination of patent term adjustment be corrected from five hundred sixty-eight (568) days to six hundred sixty-four (664) days.

The application for patent term adjustment is **granted**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 664 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On February 13, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised of a patent term adjustment to date of 568 days. In response, applicants timely filed this application for patent term adjustment with payment of the issue fee on May 12, 2009. Although applicants have not stated a terminal disclaimer has not been filed, the record supports a conclusion that the patent issuing from this application is not subject to a terminal disclaimer.

Applicants do not disclose any specific reasons they believe the patent term adjustment is incorrect. Nonetheless, a review of the record reveals that the determination of patent term adjustment of 568 days is incorrect.

Pursuant to 37 CFR 1.703(a)(1), the period of adjustment of patent term due to examination delay includes:

The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

The application fulfilled the requirements of 35 U.S.C. 371 on June 14, 2005. The Office mailed an Office action under 35 U.S.C. 132 on May 21, 2008. Unfortunately, due to Office error, the Office action was mailed to an incorrect address. The Office action was mailed a second time on July 8, 2008, and the period for reply was restarted. The Office's delay pursuant to 37 CFR 1.703(a)(1) should have been calculated based on a mailing date of July 8, 2008, for an Office action under 35 U.S.C. 132. In other words, the period of Office delay is 694 days, the number of days beginning on the day after the date that is 14 months after the application fulfilled the requirements of 35 U.S.C. 371, June 14, 2005, and ending on the date the Office properly mailed an Office action under 35 U.S.C. 132, July 8, 2008.

Office PALM records have been corrected to show an adjustment to patent term of 694 days, instead of 646 days, for Office delay under 37 CFR 1.703(a)(1).

Under the circumstances, the patent term adjustment should not have been reduced under 37 CFR 1.704(b) by 78 days for applicants' delay in filing a reply to an Office action. The Office based the calculation of 78 days on the fact a reply was filed on a date three months and 78 days after the Office mailed an Office action on May 21, 2008. However, as previously stated, the May 21, 2008 Office action was sent to an incorrect address as a result of an Office error. Therefore, the calculation of delay under 37 CFR 1.704(b) should have been based on the Office mailing an Office action on July 8, 2008. In other words, the period of applicant delay under 37 CFR 1.704(b) is 30 days, the number of days beginning on the date that is three months after the Office properly mailed an Office action, July 8, 2008, and ending on the date applicants filed a reply, November 7, 2008.

Office PALM records have been corrected to show a reduction in patent term of 30 days, not 78 days, for applicant delay under 37 CFR 1.704(b).

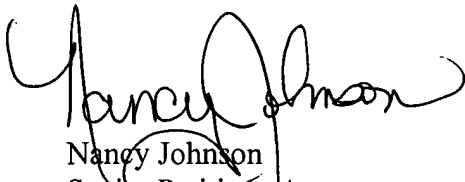
In view of the previous discussion, the correct patent term adjustment at the time of mailing of the notice of allowance is 664 days, 694 days of Office delay reduced by 30 days of applicant delay.

Applicant's request states, "It is not believed that any fee is required." However, applicants have failed to provide any reason to conclude a fee is not required for the request. 37 CFR 1.705(b) states a "request for reconsideration of the patent term adjustment indicated in the notice of allowance ... must be accompanied by ... [t]he fee set forth in [37 CFR] § 1.18(e)." The fee set forth in 37 CFR 1.18(e) is \$200. Therefore, \$200 has been charged to deposit account 22-0261 listed on the request.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Friday
Date: 8/28/2009

PALM INTRANET

Time: 12:00:52

PTA Calculations for Application: 10/538743

Application Filing Date:	06/14/2005	PTO Delay (PTO):	646
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	78
Post-Issue Petitions:	0	Total PTA (days):	664
PTO Delay Adjustment:	96		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
57	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	694		
56	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		646	
55	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		30	
54	08/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	78		
47	02/13/2009	MAIL NOTICE OF ALLOWANCE			
46	02/12/2009	ISSUE REVISION COMPLETED			
42	02/11/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
41	02/11/2009	DOCUMENT VERIFICATION			
40	02/11/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
39	02/11/2009	CASE DOCKETED TO EXAMINER IN GAU			
38	02/11/2009	NOTICE OF ALLOWABILITY			
37	12/10/2008	DATE FORWARDED TO EXAMINER			
36	11/07/2008	RESPONSE AFTER NON-FINAL ACTION		78	29
35	11/07/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	07/08/2008	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
33	07/03/2008	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
32	06/30/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
31	06/26/2008	CORRESPONDENCE ADDRESS CHANGE			
30	06/26/2008	CORRESPONDENCE ADDRESS CHANGE			
29	05/21/2008	MAIL NON-FINAL REJECTION	646		-1
28	05/20/2008	NON-FINAL REJECTION			
		INFORMATION DISCLOSURE STATEMENT			

27	06/14/2005	CONSIDERED			
26	11/02/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	02/25/2008	CASE DOCKETED TO EXAMINER IN GAU			
21	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
20	08/23/2007	CASE DOCKETED TO EXAMINER IN GAU			
19	03/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
18	10/30/2006	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
17	09/01/2006	CASE DOCKETED TO EXAMINER IN GAU			
16	08/08/2006	TRANSFER INQUIRY TO GAU			
15	06/08/2006	CASE DOCKETED TO EXAMINER IN GAU			
14	05/04/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	06/14/2005	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
12	06/14/2005	REFERENCE CAPTURE ON IDS			
11.7	06/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	06/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	06/14/2005	PRELIMINARY AMENDMENT			
9	05/04/2006	CASE DOCKETED TO EXAMINER IN GAU			
8.7	11/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	11/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	12/20/2005	CLEARED BY OIPE CSR			
6	12/07/2005	CLEARED BY OIPE CSR			
5	06/14/2005	371 COMPLETION DATE			
4	11/04/2005	APPLICATION DISPATCHED FROM OIPE			
3	11/04/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
2	07/12/2005	PCT CLASSIFICATION			
1	06/14/2005	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION